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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,990	01/22/2001	Jerome Besse	P66226US0	4037

136 7590 12/18/2001

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EXAMINER

DI NOLA BARON, LILIANA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 12/18/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/764,990

Applicant(s)

BESSE JEROME ET AL.

Examiner

Liliana Di Nola-Baron

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-20 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claim 16 objected to because of the following informalities: the term "quercitin" is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 13-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Regarding claims 13-19, the phrase "in particular" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over N'Guyen et al. in view of Lanzerdörfer et al.

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The claimed invention refers to a composition comprising flavonoids and a vehicle and a method comprising administering said composition.

N'Guyen et al. provides a method for treating damage caused to the skin and mucous membranes by radiation or free radicals, said method comprising applying to the skin or mucous membranes a composition comprising a product having peroxidase activity and an antioxidant (See e.g., col. 1, line 55 to col. 2, line 19). N'Guyen et al. teaches that polyphenols are agents capable of neutralizing oxygen radicals and includes flavonoids, and in particular tangeretine, rutin and quercetin, among the polyphenols used in the invention (See e.g., col. 3, line 61 to col. 4, line 67). N'Guyen et al. teaches that the compositions of the invention may be in the form of solutions or gels and include adjuvants, such as thickeners, in the compositions (See e.g., col. 7, lines 8-27). The anti-wrinkle dermapharmaceutical gel disclosed in Example 7 comprises synperonic PE/L62, which is Poloxamer 182.

Thus, N'Guyen et al. discloses compositions comprising flavonoids and poloxamer and methods comprising applying said compositions to the mucous membranes. N'Guyen et al. does not specify the kind of radiations, which cause damage to the skin.

Lanzerdörfer et al. discloses topical formulations for the prophylaxis and treatment of hyperreactive skin predisposed to dermatitis and teaches that the compositions of the invention comprise flavonoids (See e.g., col. 1, line 1 to col. 2, line 6). Lanzerdörfer et al. includes radiodermatitis caused by ionizing radiation therapy among the skin diseases treated by the compositions of the invention.

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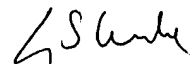
Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the compositions disclosed by N'Guyen et al. to mucous membranes for the treatment of dermatosis caused by radiation or other invasive treatment, as taught by Lanzerdörfer et al. Because of the teachings of N'Guyen et al. and Lanzerdörfer et al., that flavonoids may be combined with thickeners in topical compositions and are effective in the treatment of skin diseases, one of ordinary skill in the art would have a reasonable expectation that the compositions and methods disclosed in the instant application would be successful. Therefore the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Liliana Di Nola-Baron whose telephone number is 703-308-8318. The examiner can normally be reached on Monday through Thursday, 5:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1234/ 1235.

December 17, 2001


S. K. Kishore, PhD
12/17/01
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